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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/939,405	08/27/2001	Kenneth Alan Pieroni	CHMP-102D	5474

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EXAMINER	
GARBER, CHARLES D	

ART UNIT	PAPER NUMBER
2856	

DATE MAILED: 04/12/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

SM

Office Action Summary	Application No.	Applicant(s)	
	09/939,405	PIERONI ET AL.	
	Examiner	Art Unit	
	Charles D. Garber	2856	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☒ Responsive to communication(s) filed on 3/28/2005

2a)☐ This action is **FINAL**. 2b)☒ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☒ Claim(s) *11-18,29 and 32-34* is/are pending in the application.

4a) Of the above claim(s) *11-18* is/are withdrawn from consideration.

5)☐ Claim(s) _____ is/are allowed.

6)☒ Claim(s) *29 and 32-34* is/are rejected.

7)☐ Claim(s) _____ is/are objected to.

8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9)☐ The specification is objected to by the Examiner.

10)☐ The drawing(s) filed on _____ is/are: a)☐ accepted or b)☐ objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12)☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a)☐ All b)☐ Some * c)☐ None of:

1.☐ Certified copies of the priority documents have been received.

2.☐ Certified copies of the priority documents have been received in Application No. _____.

3.☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1) ☒ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) Paper No(s)/Mail Date _____.
4) ☐ Interview Summary (PTO-413) Paper No(s)/Mail Date. _____.
5) ☐ Notice of Informal Patent Application (PTO-152)
6) ☐ Other: _____.

DETAILED ACTION

Continued Examination Under 37 CFR 1.114

A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on 03/28/2005 has been entered.

Response to Arguments

Applicant's arguments with respect to claims 29, 32-34 have been considered but are moot in view of the new ground(s) of rejection.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

> (a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

The factual inquiries set forth in *Graham* **v.** *John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

Claim 29 is rejected under 35 U.S.C. 103(a) as being unpatentable over Westervelet et al. (US Patent 3,872,712) in view of Rogers et al. (US Patent 5,239,858) and Arnaud et al. (US Patent 4,198,374).

Regarding claims 29, Westervelt discloses a dynamic air flow comparator system that may be used for testing workpieces for leakage.

Workpieces may include "transmission housings, power cylinders, parts carrying seals or any of a wide variety of other items" according to Westervelt (Background), but not expressly testing fuel vapor recovery systems.

Rogers teaches leak testing such systems as shown in figure 1A as a required by the EPA (column 1 lines 27-41).

It would have been obvious to one having ordinary skill in the art at the time the invention was made to test the vapor recovery system of an automobile because leaks in such systems "is both wasteful and environmentally unsound, as the evaporated fuel, in addition to creating a possibly dangerous situation, contributes to unwanted hydrocarbon pollution."

Westervelt discloses alternatively connecting the workpiece 50 and reject calibration leak 35 (leak tolerance standard) to a pressure source at air supply inlet 36 and to flow sensors 17 and 62. Westervelt uses air (abstract) which is not flammable. Flow sensor 62 is a visual flow indicator that may be used in conjunction with the automated test (using flow sensor 17) or independently if the user chooses to perform a manual test. The calibration circuit is employed at the end of each test (either automatically or manually) and therefore precedes any subsequent test which

anticipates "disconnecting the gas supply line and... gas flow meter from the leak tolerance standard and reconnecting the gas supply line and... gas flow meter to" a workpiece as in the instant invention. Sequencing of the valves 56 and 33 switches supply pressure from the workpiece to the calibrated leaks.

Comparison of the calibration and workpiece leak flow rates is performed either automatically with comparator system 48 or manually using visual flow gauge 62 as an alterative to the red and green lamp signals (column 5 lines 24-26).

The gauge 62 is depicted in idealized form and Westervelt does not reveal specifically what type of visual gauge is used.

Arnaud teaches a flow meter 36 may be "a glass tube and ball flow meter of the well known variety...which permits the operator to visually monitor the flow" (column 10 lines 3-7).

It would have been obvious to one having ordinary skill in the art at the time the invention was made use a ball type flow valve as they are "well known" "which permits the operator to visually monitor the flow". Selecting a "well known" device for monitoring flow would allow it to be easily adapted for use in Westervelt's invention.

Claim 32 is rejected under 35 U.S.C. 103(a) as being unpatentable over Westervelet et al. (US Patent 3,872,712) as modified by Rogers et al. (US Patent 5,239,858) and Arnaud et al. (US Patent 4,198,374) and applied to claim 29 above and further in view of Mieczkowski et al. (US Patent 5,898,108)

The references lack the non-flammable gas for pressurizing the system is nitrogen. Mieczkowski teaches nitrogen is a suitable gas for pressuring a fuel vapor

recovery system of a motor vehicle for leak testing (column 6 lines 60-61 and column 2 lines 14-18). It would have been obvious to one having ordinary skill in the art at the time the invention was made to leak test using nitrogen to pressurize a system under test as nitrogen is a "suitable" gas and is further required by EPA regulations.

Claim 33 is rejected under 35 U.S.C. 103(a) as being unpatentable over Westervelet et al. (US Patent 3,872,712) as modified by Rogers et al. (US Patent 5,239,858) and Arnaud et al. (US Patent 4,198,374) and applied to claim 29 above and further in view of Adams (US Patent 4,462,249).

The references lack the non-flammable gas is carbon dioxide.

Adams discloses a leak test device including cylinder 41 providing gas used to pressurize a tank during a leak test. Adams teaches the "gas cylinder preferably contains nitrogen it can also be any other inert gas such as carbon dioxide".

It would have been obvious to one having ordinary skill in the art at the time the invention was made to pressurize a system with either nitrogen or carbon dioxide as both are inert and therefore will not react harmfully with the system or its contents.

Claim 34 is rejected under 35 U.S.C. 103(a) as being unpatentable over Westervelet et al. (US Patent 3,872,712) as modified by Rogers et al. (US Patent 5,239,858) and Arnaud et al. (US Patent 4,198,374) and applied to claim 29 above and further in view of Toback (US Patent 3,822,585).

The references lack the gas supply including a check valve in the supply line.

Toback teaches check valve 50 in line 51 from air source at 54.

This is done typically to maintain pressure if the source is disconnected or to prevent contamination of the source from backflow.

It would have been obvious to one having ordinary skill in the art at the time the invention was made to dispose a check valve in the gas supply line in order to prevent backflow and thereby hold pressure and prevent contamination of the source.

Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Charles D. Garber whose telephone number is (571) 272-2194. The examiner can normally be reached on 6:30 a.m. to 3:00 p.m..

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Hezron Williams can be reached on (571) 272-2208. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see http://pair-direct.uspto.gov. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

cdg

CHARLES GARBER
PRIMARY EXAMINER